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JUL 29 2002

MARY E. D'ANDREA, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DARRELL G. OBER,

Plaintiff

vs.

PAUL EVANKO, MARK CAMPBELL,
THOMAS COURY, JOSEPH WESTCOTT,
HAWTHORNE CONLEY,

Defendants

NO. 1: CV-01-0084
(Judge Caldwell)

CIVIL ACTION - LAW

JURY TRIAL DEMANDED

**DEFENDANTS' MOTION TO STRIKE EXHIBITS TO PLAINTIFF'S
REPLY BRIEF TO DEFENDANTS' BRIEF IN OPPOSITION
TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

1. On May 6, 2002, plaintiff filed a motion for summary judgment. On May 20, 2002, he filed a brief in support of that motion along with his concise statement of material facts and affidavit.
2. On June 14, 2002, defendants filed a brief in opposition to plaintiff's motion for summary judgment.
3. On June 27, 2002, plaintiff filed a reply brief to defendants' brief opposing his motion for summary judgment. The following exhibits were attached to that brief:
 - a. Exhibit A – an affidavit from Major Phillip DeWire

- b. Exhibit B – two electronic messages
 - c. Exhibit C – an arbitration decision dated May 30, 2002, involving a grievance filed by Trooper William Kephart
 - d. Exhibit D – plaintiff's affidavit
 - e. Exhibit E – plaintiff's "Affidavit II"
 - f. Exhibit F – plaintiff's third affidavit
 - g. Exhibit G – plaintiff's "Affidavit IV" and attached exhibits A through E.
 - h. Exhibit H – a memo written by Colonel Evanko, a copy of an article in *Lockheed Martin Today*, and an electronic message written by Colonel Evanko.
4. Paragraphs 1, 3, and 4 of Exhibit A should be stricken because they contain inadmissible and irrelevant hearsay. Paragraph 5 should be stricken as irrelevant.
5. Exhibit B should be stricken from the record because it consists of two electronic messages that are not properly authenticated by a sworn affidavit and consist entirely of inadmissible hearsay.
6. Exhibit C, the arbitration decision, should be stricken from the record because it is not properly authenticated and is irrelevant and immaterial to the issues in this case.
7. Exhibit D is an affidavit by the plaintiff that should be stricken because it is comprised almost entirely of his personal opinions, beliefs, and unwarranted conclusions.

The few facts contained in the affidavit are so intertwined with hyperbole, rhetoric, and inadmissible speculation that they are almost impossible to separate.

8. Paragraphs 6 and 7 of Exhibit F (plaintiff's third affidavit) should be stricken because they are nothing more than plaintiff's personal opinions and unwarranted speculation. Paragraph 8 should be stricken because it is directly contradicted by record. Paragraph 9 should be stricken because it is mixture of hearsay and Ober's personal opinions and unwarranted speculation.

9. The following portions of Exhibit G, "Affidavit IV," should also be stricken from the record:

a. Paragraphs 1 and 2 of Exhibit G, "Affidavit IV," should be stricken because they are comprised of inadmissible personal opinions and hearsay. The last line of paragraph 3 should be stricken because it a conclusion not supported by the record. The last line of paragraph 4 should be stricken for the same reason. The first 6 lines of paragraph 5 are hearsay and should be stricken. The first seven words of the last sentence of paragraph 5 is an unwarranted conclusion that should be stricken.

b. Exhibit A to Affidavit IV should be stricken because it is not properly authenticated.

c. Exhibit B to Affidavit IV should be stricken because it is hearsay, is not properly authenticated, and the information contained therein is not within the plaintiff's personal knowledge.

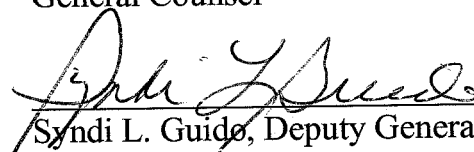
- d. Exhibit C to Affidavit IV should be stricken because it is hearsay and not properly authenticated.
 - e. There are two documents marked Exhibit D to Affidavit IV. Both should be stricken because they are hearsay and not properly authenticated.
 - f. Exhibit E to Affidavit IV should be stricken because it is hearsay, is not properly authenticated, and is not probative of the issues in this case.
10. Exhibit H should be stricken because it is hearsay, has not been properly authenticated, and is not probative of the issues in this case.

WHEREFORE, defendants respectfully ask this Court to strike those portions of the exhibits identified in ¶¶ 4-10 above.

Respectfully submitted,

JAMES M. SHEEHAN
General Counsel

By:


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(717) 787-9356

Dated: July 29, 2002


(Counsel for Defendants)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

| | | |
|-------------------------|---|---------------------|
| DARRELL G. OBER, | : | |
| | : | |
| Plaintiff | : | NO. 1: CV-01-0084 |
| | : | (Judge Caldwell) |
| vs. | : | |
| | : | |
| | : | CIVIL ACTION - LAW |
| | : | |
| PAUL EVANKO, MARK | : | |
| CAMPBELL, THOMAS COURY, | : | JURY TRIAL DEMANDED |
| JOSEPH WESTCOTT, | : | |
| HAWTHORNE CONLEY, | : | |
| Defendants | : | |

CERTIFICATE OF NONCONCURRENCE

Counsel for the defendants certify that they sought the concurrence of plaintiff's counsel, Don Bailey, in Defendants' Motion To Strike Exhibits to Plaintiff's Reply Brief in Opposition to Plaintiff's Motion for Summary Judgment. Mr. Bailey does not concur in defendants' motion.


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Dated: July 29, 2002

